

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-0801092
	:	TRIAL NO. B-0709066
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
JOSHUA COLLINS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In November 2007, defendant-appellant Joshua Collins was charged with felonious assault in violation of R.C. 2903.11(A)(1) and endangering children in violation of R.C. 2919.22(A). The bill of particulars alleged that Collins had inflicted “severe trauma” to his four-month-old son’s head, causing skull fractures and intercranial bleeding, and that his son also had healing rib fractures.

These charges proceeded to a bench trial. But after three days of testimony, Collins entered into a plea agreement with the state, pleading guilty to one count of endangering children, a third-degree felony, in exchange for the dismissal of the felonious-assault charge. Collins clarified that he was pleading guilty only to causing “the subdural hematoma,” and not to causing the skull and rib fractures. The state

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

agreed to recommend a prison term of one year. But the trial court, upon reviewing the presentence investigation report, chose to impose a three-year prison term basing it on Collins's juvenile record and on testimony during the aborted bench trial that, the court found, supported a greater sentence. Collins now appeals his sentence. For the following reasons, we affirm.

In his single assignment of error, Collins argues that the trial court abused its discretion by refusing to impose the agreed sentence of one year. More specifically, Collins argues that his sentence was unreasonable and arbitrary because the trial court had based the sentence on facts that had not been proven and had ignored mitigation presented by the defense.

In reviewing post-*Foster*² sentencing cases, an appellate court must first “examine the sentencing court’s compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law.”³ If the sentence is not contrary to law, then the appellate court moves to the next step and reviews the sentence under an abuse-of-discretion standard.⁴

After a thorough review of the record, we hold that Collins’s sentence was not contrary to law. A trial court does not err by imposing a sentence greater than the sentence agreed to by the state and the defendant, when the trial court “forewarns the defendant of the applicable penalties, including the possibility of imposing a greater sentence than that recommended by the prosecutor.”⁵ Here, the trial court informed Collins during the plea hearing that a third-degree felony carried a

² *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

³ *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124, ¶126.

⁴ *Id.*

⁵ *State v. Buchanan*, 154 Ohio App.3d 250, 2003-Ohio-4772, 796 N.E.2d 1003, ¶13; *State v. Darmour* (1987), 38 Ohio App.3d 160, 529 N.E.2d 208.

potential prison term of one to five years, and that the court did not have to impose the sentence recommended by the state. Furthermore, the actual sentence imposed was within the applicable statutory range.⁶

Next, we hold that the trial court did not abuse its discretion by imposing a three-year prison term. Although the trial court did unnecessarily comment on the socio-economic status of, and lack of father figures in, Collins's and his girlfriend's families, the testimony the trial court heard from the physician who had examined the injured baby and from the investigating police officer during the aborted bench trial supported a prison term higher than the one-year term the state had recommended.

Dr. Kathi Makaroff, a physician at the Mayerson Advocacy Center at Children's Hospital, testified that she had examined Collins's baby, and that it had appeared that the most recent injury the baby had suffered was a subdural hematoma, although she also had observed skull fractures and several broken ribs that were in the process of healing. She testified that a subdural hematoma can potentially lead to long-term permanent damage to motor skills and cause seizures. She testified that, in her expert opinion, the baby had suffered from abuse, and she noted that Collins's hand had been bandaged when she had spoken with him at the hospital. On cross-examination, she conceded that dropping a baby on the floor could also cause a subdural hematoma.

Detective Todd Ober testified that Collins had told authorities that he had been changing his baby's diaper, when the baby pushed backwards and hit his head on the concrete wall. But later, the detective testified, Collins had added to his story

⁶ See R.C. 2929.14(A)(3).

and had said that he had accidentally dropped the baby on the floor while he was running to call 911.

In mitigation, a licensed social worker wrote a letter on Collins's behalf indicating she had not observed any anger-management issues when he was interacting with his baby. And the baby's mother stated that she did not believe that Collins would intentionally hurt their son. But despite this mitigation, we cannot say that the trial court abused its discretion by imposing a three-year prison term, given Collin's juvenile record and the fact that the subdural hematoma could have future detrimental effects on the baby's development. Accordingly, the single assignment of error is overruled.

The judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., PAINTER and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on August 19, 2009
per order of the Court _____.
Presiding Judge